

119th Session

Judgment No. 3441

THE ADMINISTRATIVE TRIBUNAL,

Considering the first complaint filed by Mrs N. G. against the United Nations Industrial Development Organization (UNIDO) on 19 June 2012 and corrected on 14 September, UNIDO's reply of 21 December 2012, the complainant's rejoinder of 29 March 2013 and UNIDO's surrejoinder of 8 July 2013;

Considering the second complaint filed by the complainant against UNIDO on 16 August 2012 and corrected on 16 November 2012, UNIDO's reply of 13 March 2013, the complainant's rejoinder of 24 June and UNIDO's surrejoinder of 30 September 2013;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the cases and the pleadings may be summed up as follows:

A. The complainant joined UNIDO under a fixed-term appointment in October 2001. At the time material to her first complaint she had been on continuous sick leave since March 2008 and her contract was due to expire on 29 October 2010.

On 2 June 2010 the complainant was notified that the Medical Adviser held the opinion that she would not be able to return to work before the end of 2010. As her contract was due to expire on 29 October, in accordance with Administrative Rule H.3(a) of the United Nations Joint Staff Pension Fund (UNJSPF), a submission

would be made to the Staff Pension Committee (SPC) for a determination as to whether she was incapacitated for further service within the meaning of Article 33 of the UNJSPF Regulations. On 2 August the complainant wrote to the Director-General and requested that any related administrative decision be postponed and that her contract be extended so that a well-founded medical decision regarding her prognosis and her future ability to perform occupational duties could be taken in January 2011. By a memorandum of 8 October from the Secretary of the SPC she was informed that the UNJSPF had certified the decision of the SPC to grant her a disability benefit, with effect from her date of separation on 29 October 2010.

By a memorandum of 14 October, the complainant was offered a temporary appointment (which she accepted) for a term of three months and two days, with effect from 30 October 2010 until 31 January 2011; her sick leave was also extended. She was informed that the extension would provide her with the opportunity to present her case for review to the SPC. In the event that she decided not to request such a review or the decision of the UNJSPF was confirmed, she would be separated from service for health reasons with effect from 1 February 2011, in accordance with the Staff Rules.

On 5 November 2010, the complainant submitted an appeal to the Joint Appeals Board (JAB) in which she challenged the decision of 2 June 2010 to submit her case to the SPC.

By a memorandum of 6 December 2010 the complainant requested the Director-General to review the decision to grant her a three-month appointment and she asked to be granted a “normal” three-year contract extension. The same day, she submitted a request for review of the UNJSPF decision to the Secretary of the SPC. In January 2011 the SPC reversed its initial determination and it forwarded this decision to the UNJSPF for certification. On the basis of a recommendation by the Vienna International Centre Medical Director the complainant returned to work on a part-time basis as from 24 January. The Administration intended to review her situation in six weeks.

In the absence of a decision from the UNJSPF regarding the SPC's decision to reverse its determination with respect to the complainant's entitlement to a disability pension, the complainant was offered, and accepted, a temporary appointment for a term of two months, with effect from 1 February 2011. She requested the Director-General to review this decision; she was subsequently informed that it was maintained. In March 2011 the complainant was notified that the UNJSPF had certified the SPC's recommendation to reverse its decision and thus, she was no longer considered incapacitated for further service.

On 5 March 2011 the complainant lodged an appeal with the JAB in which she challenged the decisions to grant her appointments for periods of three and two months respectively. She sought the award of a three-year contract extension, moral damages, and costs.

On 25 March 2011 she was informed by the Administration that her contract would be extended for a period of six months (from 1 April to 30 September 2011), during which time she would have the opportunity to provide clarification on two issues, one of which was her claims for dependency benefits in respect of her spouse. She was further informed that she would be invited, in accordance with the requirements of Administrative Circular UNIDO/DA/PS/AC.87 of 28 May 1992 on disciplinary measures, for a formal interview which was to take place as soon as possible.

Following numerous exchanges and meetings with the Administration, by a memorandum of 14 June 2011 the complainant was notified that the Administration would proceed with the next step of the disciplinary process, i.e. with a recommendation to the Director-General. On 15 June she was informed that, in the absence of the required documentary evidence, it had been decided to discontinue payment of dependency benefits in respect of her spouse (who would no longer be considered a dependent) and to recover the amounts paid to her from 1 June 2009 to 31 May 2011. Further exchanges ensued between the complainant and the Administration regarding, inter alia, the provision of supporting documentation on her spouse's earnings during the material time. On 11 July 2011 she requested that the decision of 15 June be set aside and asserted that failure to do so

would be a continuation of the personal harassment and prejudicial treatment that she had been subjected to by members of the Administration and that it would be evidence of a continuous abuse of authority.

By a memorandum of 9 August the complainant was notified of the outcome of UNIDO's fact-finding exercise regarding two matters, one of which was her claim for dependency benefits, and she was told that, unless clarified, those findings would amount to serious misconduct. Furthermore, if the Director-General agreed with the findings, he could decide not to extend her appointment beyond its current expiry date or submit her case to the Joint Disciplinary Committee.

On 6 September the complainant was informed that the decision to discontinue and recover the dependency benefits that had been paid to her in respect of her spouse was maintained. By a memorandum of 16 September she was notified that the Director-General had decided that her contract would be allowed to expire and would not be renewed beyond 30 September 2011. Furthermore, as a result of the fact-finding exercise, it had been concluded that her conduct was incompatible with her status as an international civil servant and had failed to meet the standards of integrity required by that status. She was granted one month's salary in lieu of notice.

On 7 November 2011 the complainant filed an appeal with the JAB in which she challenged the decisions to recover from her the dependency benefits paid to her for the period from 1 June 2009 to 31 May 2011 and to discontinue those payments as from 1 June 2011.

In its report of 19 December 2011 regarding the complainant's challenge of UNIDO's decision to request the SPC to make a determination as to whether she was incapacitated for further service, the JAB concluded that it was not competent to question the medical advice of the SPC. Furthermore, as the complainant had also submitted an appeal to the UNJSPF in December 2010, the JAB considered that her appeal was irreceivable. By a memorandum of 9 January 2012 to the Second Alternate Secretary of the JAB, the Director-General endorsed the recommendation of the JAB, dismissed

the complainant's appeal in its entirety, and requested that the complainant be so informed.

In its report of 20 March 2012 on the complainant's appeal regarding the short-term extensions of her contract, the JAB concluded that UNIDO had correctly applied Staff Regulation 10.3 and that the complainant was not eligible for a three-year contract extension. It rejected her claims for moral damages and legal costs. By a memorandum of 26 March 2012 the Director-General dismissed the complainant's appeal in its entirety. That is the decision the complainant impugns in her first complaint.

In its report of 23 April 2012 on the complainant's appeal regarding her entitlement to dependency benefits in respect of her spouse, the JAB recommended that her appeal be dismissed in its entirety. On 18 May 2012 the Director-General endorsed the JAB's recommendations. That is the decision the complainant impugns in her second complaint.

B. In her first complaint, the complainant characterises UNIDO's decision to seek a determination as to whether she was incapacitated for further service (communicated to her on 2 June 2010) as the beginning of a "campaign of moral harassment" in the form of psychological aggression directed against her in order to terminate her employment.

Referring to the Tribunal's case law, she submits that although a decision related to the extension of an appointment is discretionary, the Tribunal will interfere if the decision was taken without authority, if it was based on an error of law, a material fact was overlooked, or a plainly wrong conclusion was drawn from the facts; if it was taken in breach of a rule of form or procedure; or if there was an abuse of authority. She argues that UNIDO abused the UNJSPF rules and procedures in order to terminate her appointment. There were no lawful grounds upon which UNIDO could seek a determination as to whether she was incapacitated for further service and these actions represent an abuse of authority. Also, there is no interest served by linking a decision on the extension of a staff member's appointment to

the outcome of an appeal related to a disability benefit, especially where the outcome of such an appeal is certain. Thus, it appears that the first short-term extension of her contract was a sanction for exercising her right of appeal, as was the second extension, and she points out that the Tribunal has previously strongly condemned this type of retaliatory action.

The complainant asserts that the SPC Secretary was sharing confidential information with the Administration in breach of her right to anonymity. Furthermore, she considers that the intention on the part of UNIDO to review her medical condition constitutes a breach of privacy and amounts to discriminatory unequal treatment. She asserts that the decisions regarding the extensions of her contracts were notified to her on short notice and the decision at issue involves a grave breach of good faith and mutual trust.

She asks the Tribunal to set aside the impugned decision dated 26 March 2012 and to award her material damages in the amount she would have earned had her contract been extended for three years, with interest from due dates. She seeks moral damages in the amount of 30,000 Euros, and legal costs.

In her second complaint the complainant submits that the decision to discontinue and recover the dependency benefits was a disciplinary sanction taken without due process and was part of the aforementioned campaign of moral harassment and psychological aggression directed at her. She accuses UNIDO of bad faith. Furthermore, as UNIDO also allowed her appointment to expire, in her view she was sanctioned twice for the same alleged misconduct.

The complainant argues that UNIDO failed to seek timely clarification from her regarding the information she provided in support of her claim for dependency benefits. Furthermore, despite the reasonable explanations she did provide, she was advised that the Administration had decided to proceed with the next step in the disciplinary process.

Lastly, she reiterates several of the pleas she raised in her first complaint.

In her second complaint she asks the Tribunal to set aside the impugned decision dated 18 May 2012 and to award her material damages in an amount equal to the amount that was recovered from her in respect of her claim for dependency benefits, with interest. She seeks moral damages, and legal costs.

C. In its replies to both complaints, UNIDO submits that several of the complainant's allegations go beyond the scope of the claims that formed part of her internal appeals and thus, those allegations are irreceivable for failure to exhaust internal remedies. In addition, the Tribunal is not competent to make any ruling on UNIDO's application of the UNJSPS Regulations and Rules and, consequently, the complainant's allegations in this respect are also irreceivable. In its reply to her first complaint, UNIDO points out that the complainant unsuccessfully challenged its decision to request a determination by the SPC under the UNJSPF Regulations, and as the complainant did not challenge the Director-General's final decision in this respect within the prescribed time limits, any related allegations in the present complaint are irreceivable.

Addressing the merits of the first complaint, UNIDO asserts that there were legitimate grounds for seeking a determination of incapacity from the SPC and the referral was soundly based on the applicable UNJSPF Regulations and Rules, as well as the Medical Adviser's assessment of the complainant's condition. It denies that its actions were illegal or an abuse of power. Furthermore, the decision to request the SPC's determination pursuant to Administrative Rule H.3(a) is not subject to a staff member's views, consent or approval. In any event the complainant was given notice of the referral to the SPC.

Regarding the complainant's two successive short-term contract extensions, UNIDO points out that in her memorandum to the Director-General of 2 August 2010 the complainant did not request a three-year extension. Furthermore, in October 2010, UNIDO clearly had the authority to separate the complainant on the grounds of disability. The Director-General's decision to extend her appointment until 31 January 2011 satisfied the complainant's own request on the

matter, and on this ground alone UNIDO considers that her allegations concerning the first contract extension should be dismissed for want of merit. In addition, Staff Rule 103.10(b) does not impose an obligation for UNIDO to extend contracts for a three-year period. The duration of extensions is subject to the UNIDO's programme activities and budgetary coverage. Also, UNIDO asserts that the complainant's and its own interests were properly taken into consideration. With respect to the complainant's second extension, it reiterates the arguments it has made with respect to her first extension. Lastly, it characterises the complainant's allegations that the Secretary of the SPC was sharing confidential information as unsubstantiated and without merit and asserts that it followed the applicable rules and regulations to the letter.

In its reply on the merits to the second complaint, UNIDO sets out the relevant Staff Regulations, Staff Rules and procedures with respect to claims for dependency allowances and submits that it is the staff member's responsibility to prove, by providing supporting information and evidence (which may be required at any time), that he or she is entitled to receive dependency benefits. A staff member is also required to report any changes affecting his or her status under the Staff Regulations and Staff Rules and any change in the status of a dependant which may affect payment of the dependency allowance. In addition, referring to Information Circular UNIDO/IC/2011/04 of 16 May 2011, UNIDO points out that it is possible under the rules governing the entitlement to recover a dependency benefit that was paid in error. Thus, a decision to effect such a recovery is not a disciplinary sanction.

UNIDO contends that the complainant's spouse was gainfully employed during time periods material to her claim for dependency benefits. Also, the complainant was given several opportunities to provide documentary evidence of her spouse's earnings for 2009 and 2010 and she failed to do so. Indeed, her explanations and clarifications were not reasonable or sufficient. UNIDO asserts that the decision to recover the payments at issue was not a disciplinary sanction without due process. Furthermore, the complainant's

allegations of prejudice, abuse of authority, bad faith, breach of privacy, good faith and mutual trust, moral harassment and psychological aggression are without merit.

Lastly, UNIDO states that it acted transparently, in good faith, and with proper purpose, in line with the relevant Staff Regulations and Staff Rules, and with due regard for the complainant's dignity.

D. In her rejoinders the complainant presses and develops her pleas.

E. In its surrejoinders UNIDO maintains its position in full.

CONSIDERATIONS

1. The Tribunal finds it convenient to join these two complaints in a single judgment as they are based on similar and related underlying facts and issues and involve the same parties.

2. In her first complaint, the complainant challenges the final decision, dated 26 March 2012, in which the Director-General accepted the recommendations of the JAB to dismiss the internal appeal which the complainant submitted on 5 March 2011. In that appeal the complainant, whose three-year fixed-term contract expired on 29 October 2010, challenged UNIDO's decisions to grant her a three-month contract from 30 October 2010 to 31 January 2011 and a two-month contract from 1 February 2011 to 31 March 2011.

3. In her second complaint, the complainant challenges the final decision, dated 18 May 2012, in which the Director-General accepted the recommendations of the JAB to dismiss the internal appeal which she filed on 7 November 2011, thereby confirming a prior decision by the Administration to recover dependency benefits which the complainant had received in respect of her husband in the two-year period from 1 June 2009 to 31 May 2011. It was by a memorandum of 15 June 2011 that the complainant was first notified of the decision to recover these payments and to cease payments of

spousal dependency benefits from 1 June 2011. The Administration confirmed that decision by a memorandum of 30 June 2011. The complainant contends that the decision was based on her alleged misconduct, but that it was taken before the disciplinary proceedings were concluded. The complainant also states that she suffered two sanctions related to the same alleged misconduct when her appointment was not extended before the completion of the disciplinary procedure. However, this issue will not be considered in this judgment as it was not an aspect of her case in the internal appeal proceedings.

4. The complainant seeks to have the impugned decisions set aside, and also seeks material and moral damages, interest and costs.

5. UNIDO raises receivability as a threshold issue in relation to some aspects of the complaints. It submits that several of the allegations contained in the complainant's briefs go beyond the scope of the issues she raised in the internal appeals. The Tribunal's case law provides, in effect, that a complainant cannot ask the Tribunal to consider issues which were not a part of the case in the internal appeal proceedings. This is because if those issues were not before the internal appellate body for consideration they would be irreceivable for failure to exhaust internal remedies as Article VII, paragraph 1, of the Tribunal's Statute requires. (See, for example, Judgment 2808, under 9.) This requires a closer look at the cases which the complainant presented in her internal appeals in order to determine whether any matter in the present complaints is irreceivable.

6. The gravamen of the complainant's challenge, in her first complaint, is the argument that in giving her the two short-term contracts, instead of a three-year contract, UNIDO breached its duty of care, good faith and mutual trust towards her thereby causing her material, moral and professional injury and injury to her dignity. These are live and receivable issues in the first complaint.

7. However, the new allegation in the brief to her first complaint, that the decisions by the Administration to refer her case to the SPC for determination of incapacity under Administrative Rule H.3(a) of the UNJSPF Regulations was tainted by abuse of process is irreceivable. So too are the new allegations that the impugned decisions concerning her first complaint were taken on irrelevant considerations and in violation of her right to privacy concerning her health. These matters were not raised in her internal appeal.

8. Moreover, the Tribunal notes that the complainant seeks to impeach UNIDO's decision to request a determination by the SPC as to whether she was incapacitated for further service under Article 33(a) of the UNJSPF Regulations. However, on 9 January 2012 the Director-General, on the JAB's recommendation, dismissed the complainant's internal appeal on this matter. This matter was not addressed in the decisions impugned in these two complaints. Accordingly, this issue is irreceivable. In any event, all of these and other issues which call into question decisions that are made on the basis of the UNJSPF Regulations are irreceivable in the Tribunal as they fall within the exclusive jurisdiction of the United Nations Appeals Tribunal under UNIDO Staff Regulation 12.2(b).

9. There were three main grounds in the complainant's statement of appeal in the JAB in the matter concerning the recovery of dependency payments, which are repeated in the second complaint and are thus receivable. One is, in effect, that UNIDO acted unlawfully and in bad faith because the allegations on which the decision was made to recover the payments were not established in accordance with set procedure. The second ground is that the decision to recover the payments was the application of a disciplinary sanction without due process. The third ground is that the decision was part of a continuing course of moral harassment and psychological aggression and abuse of authority by UNIDO officials. These grounds will be considered later in this Judgment.

10. The first complaint raises allegations that the decisions to grant the complainant the short-term extensions were taken in breach of confidentiality by the Secretary of the SPC. The complainant also alleges that the decisions were in breach of her rights to privacy and anonymity by sharing her confidential information. In her first complaint she alleges that this amounted to discrimination and unequal treatment. She further alleges, in the second complaint, that the decision to grant her a six-month extension to 30 September 2011 and the short notice of this extension, caused psychological injury to her dignity and well-being. None of these matters, nor the new allegation, in her second complaint, that the decision to terminate her employment on the basis of misconduct was unlawful and in breach of procedure, were raised in her related internal appeals. Her internal means of redress in relation to these allegations have not been exhausted as required by Article VII, paragraph 1, of the Tribunal's Statute. They are therefore irreceivable.

11. On the merits of the first complaint, the complainant submits that UNIDO breached its duty of care, good faith and mutual trust towards her when it renewed her contract for a short-term when it ended on 29 October 2010. She submits that Staff Rule 103.10(b) automatically entitled her to a three-year renewal. The Tribunal has consistently stated that the decision to extend a fixed-term contract is subject to only limited review. At the material time, Staff Rule 103.10(b) provides that "fixed term appointments shall normally be extended for a period of three years". This Rule made a three-year extension conditional upon the programme activities of UNIDO, satisfactory performance of the staff member and budgetary coverage.

12. The complainant states that UNIDO's express reason for her first contract extension to 31 January 2011 was to facilitate a final decision on the SPC/UNJSPF referral. This, she states, was an irrelevant consideration in the light of Staff Rule 103.10(b). She accepts that the Director-General may also take the interest of UNIDO into account, but contends that there was no interest to be served by tying her extension to the outcome of an appeal concerning the

granting of a disability benefit to her. She further argues, in effect, that the principles of good faith and duty of care were breached when the extension was given on short notice.

13. The Tribunal observes that while the memorandum of 14 October 2010 makes references to the complainant's prolonged illness, it specifically bases the reason for the first short-term extension on the outcome of the incapacity referral to the SPC/UNJSPF.

14. UNIDO submits that both short-term contract extensions served the interests of both parties in accordance with Staff Rule 103.10(b) and Staff Regulation 10.3. In the complainant's interest, the decisions ensured that she retained her employment status and the related benefits until the final SPC/UNJSPF decision. On the other hand, they facilitated UNIDO's interest to reserve the decision whether to consider renewing her contract for three years until her capacity to return to her normal duties was determined.

15. The Tribunal observes that the complainant was informed of UNIDO's intention to refer the matter to the SPC for the incapacity determination by the memorandum dated 2 June 2010. The memorandum indicated that this referral was in light of the Medical Adviser's assessment, and pursuant to Administrative Rule H.3(a) of the UNJSPF Regulations. Administrative Rule H.3(a) permits the Administration to request an incapacity determination under Article 33(a) of the UNJSPF Regulations whenever, during or on expiry of the appointment of a participant, there is reason to believe that he or she or he may be incapacitated within the meaning of Article 33(a). Article 33(a) provides for the payment of a disability benefit to a staff member who is found by the Board to be incapacitated for further service in a member organization reasonably compatible with his or her abilities, due to injury or illness that constitutes impairment to health which is likely to be permanent or of long duration. UNIDO submits that it was Staff Regulation 10.3, rather than Staff Rule 103.10(b), that then

became operative, permitting the Director-General to grant the complainant the short extensions at issue.

16. The Tribunal observes that as early as May 2010 the Medical Service informed UNIDO that the complainant would be on continuous sick leave until December 2010. Her three-year contract expired on 29 October 2010. The Tribunal notes the communication from the complainant, as well as from her husband on her behalf, with the Administration, and the complainant's memorandum of 2 August 2010 to the Director-General. The complainant informed the Administration that she would seek to obtain a medically founded prognosis about her future capability to perform her normal duties in December 2010 or January 2011. She expressly asked for an extension to provide her with the opportunity to obtain "a medically well based decision in January 2011". Accordingly, the Tribunal considers that, when the memorandum of 14 October 2010 was issued to the complainant, there were circumstances which could have reasonably led UNIDO to grant the first short-term contract extension. In so doing, it did not breach its duty of care, good faith and mutual trust to the complainant. This ground of appeal in first complaint is therefore unfounded.

17. The complainant was informed of her second short-term contract extension from 1 February 2011 to 31 March 2011, after she returned to work on 24 January 2011. This was very short notice. She raises this as a ground on which UNIDO breached its duty of care, good faith and mutual trust towards her. UNIDO states that the short notice could not have been avoided, first, because the complainant only submitted her SPC appeal in early December 2010. Second, because it was in January 2011 that the complainant's own medical specialists submitted the medical information on which on 20 January 2011 the Medical Advisor cleared her to return to work on 24 January 2011. Third, because the complainant resumed work only on a part-time basis, with restrictions, pending a final determination within six weeks whether she could work full-time.

18. The Tribunal considers that the complainant's health condition and the related circumstances at the material time required a more sensitive approach by UNIDO. There was no reason why more timely notice could not have been given, particularly when the facilitation of her pending appeals was proffered as the main reason for the short contract extension. The Tribunal notes that the SPC had reversed its determination on the complainant's entitlement to disability benefits on 19 January 2011. Certification of that decision by the UNJSPF was a mere formality. On 5 November 2010 the complainant had filed an appeal challenging the decision to refer her case to the SPC. By memoranda of 6 December 2010, she had also sought reviews of the three-month contract extension and of the UNJSPF decision. It would have been apparent during January that the appeals process would not have been concluded by 28 February 2011.

19. Moreover, the Tribunal observes the complainant's allegation that when she met with a member of the Administration on 27 January 2011 to discuss the extension of her appointment, that official expressed displeasure because she had sought a review of the SPC decision. The complainant alleges that she was told that this was unprecedented in UNIDO's history and that she risked losing her employment and pension because of that action. These allegations are uncontroverted. The Tribunal considers that these actions, in conjunction with the short notice of the contract extension, were a breach of UNIDO's duty of care, good faith and mutual trust to the complainant. Accordingly, this ground of the first complaint is well founded and entitles the complainant to compensation for moral injury.

20. As a precursor to the merits of the second complaint, it is noted that dependency benefits are payable to staff members in respect of dependent spouses whose annual earnings do not exceed a specified level in any year. Under the relevant UNIDO provisions, claims for such allowances are to be submitted to the Administration on a form entitled "Status report and request for payment of dependency benefits". By virtue of Staff Regulation 6.9(d), this is to be accompanied by documentary evidence that satisfies the Director-General of the total

gross income of the dependent person. Staff Rule 106.16(g) requires a staff member who has claimed a dependency benefit to report to the Director-General any changes in status that would affect the payment of the allowance. In short, there are provisions to ensure the integrity of a rationalized and generous dependency benefit scheme in which the person who claims such a benefit is responsible to establish entitlement.

21. In its essentials, the initial decision which eventually led to the impugned decision that was communicated to the complainant by a memorandum dated 15 June 2011 and confirmed by a memorandum of 30 June 2011 came against the background of attempts by the Administration to rationalize the dependency benefits that were paid in respect of the complainant's spouse for the period 2006 to 2010 and up to 31 May 2011. The Administration had made the payments over the years, even when the claim forms were not submitted and certified, on the assumption that the complainant's spouse had no employment income. UNIDO made the dependency payments in good faith, notwithstanding that the claim forms for the years from 2006 to 2010 were submitted and certified in April 2010. The Administration subsequently became aware that the complainant's spouse had in fact received income, mainly for consultancies, which exceeded the specified level for entitlement to dependency benefits. It was this that led the Administration to investigate the matter, and, in so doing, to seek evidence from the complainant to support the claims.

22. The complainant submits that UNIDO did not request further documentary evidence at the time of the claims. She further submits that UNIDO acted retroactively and in bad faith because it should have taken action to recover the payments at the time when they were due. She also submits, in effect, that since UNIDO made the payments when it did, it cannot now recover them. She insists that where annual earnings were declared, they were merely estimates which reflected potential earnings. These submissions are disingenuous against the background provided in consideration 21 of this Judgment. The decision contained in the memorandum of 15 June

2011, as confirmed, came when all efforts by the Administration to obtain satisfactory documentary evidence to support the claims for the period from 1 June 2009 to 31 May 2011 proved futile in circumstances where it became clear that the complainant had failed to provide complete documentation of her spouse's earnings.

23. In relation to the first receivable issue in the second complaint, the complainant submits that the decision to recover the payments was taken in bad faith because it was not taken in accordance with the disciplinary measures set out in Administrative Circular UNIDO/DA/PS/AC.87. This, she states, is because the fact finding investigation into the allegations of misconduct was not completed when the decision to recover the dependency benefits was made. This submission misapprehends that the decision to recover payments to which there was no entitlement is an administrative decision that the Administration could have made once it was satisfied that the complainant had not provided evidence to support the entitlement to the payments. When that decision of 15 June 2011 was taken, the complainant had not done so and she still had not provided evidence by 30 June 2011 when the Administration confirmed that decision. It was her obligation to provide it. A fact-finding in the misconduct proceedings was not co-extensive with the establishment of finding that the relevant dependency benefits were paid in the absence of satisfactory proof of entitlement. It is accordingly no defence to contend, as the complainant does, that the decision to recover the payments amounts to a pre-judgment as to whether the information which she provided in the misconduct investigation against her was satisfactory or otherwise. Neither is it a defence for the complainant to submit that a good faith inquiry into the receipt of the payments would have been made at the time when the dependency payments were made and not years after, as UNIDO did.

24. There is no evidence that proves that the decision to recover the dependency payments and to cease further payments in respect of the complainant's spouse was motivated by prejudice or that it was the application of a disciplinary measure without due process.

25. In the third ground, the complainant alleges that the decision to recover and to cease further dependency payments was a continuing course of moral harassment, psychological aggression and abuse of authority by UNIDO officials, which caused her injury. The Tribunal has found, in consideration 18, that the complainant's health circumstances at the time required a more sensitive approach from UNIDO in relation to the late notice that UNIDO provided with respect to her short-term contracts. The Tribunal also found, in consideration 19 of this Judgment, that UNIDO breached its duty of care, good faith and mutual trust to the complainant in the circumstances of the second short-term contract extension. These do not however individually or together amount to harassment. Neither is there evidence which shows that the decision to recover the dependency benefits and to cease further payments from June 2011 were motivated by prejudice or a continuing course of conduct which constituted moral harassment, psychological aggression or abuse of authority by members of the Administration. Accordingly, the second complaint is unfounded and will be dismissed. The complainant has only succeeded in small part in her complaints and accordingly is entitled to costs in the amount of 2,000 euros.

DECISION

For the above reasons,

1. The impugned decision contained in the letter of the Director-General to the complainant dated 26 March 2012 is set aside to the extent that it dismissed the complainant's appeal against the short-term extension of her contract for the period from 1 February 2011 to 31 March 2011.
2. Arising from paragraph 1 of this decision, UNIDO shall pay the complainant 10,000 euros compensation for moral injury for the breach of its duty of care, good faith and mutual trust towards the complainant.

3. The complainant's second complaint against the decision of the Director-General, dated 18 May 2012 is dismissed in its entirety.
4. UNIDO shall pay the complainant 2,000 euros in costs.
5. All other claims are dismissed.

In witness of this judgment, adopted on 31 October 2014, Mr Giuseppe Barbagallo, President of the Tribunal, Mr Michael F. Moore, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 11 February 2015.

GIUSEPPE BARBAGALLO

MICHAEL F. MOORE

HUGH A. RAWLINS

DRAŽEN PETROVIĆ